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THE STUDY OF NATIVE COURT RECORDS AS A METHOD OF ETHNOLOGICAL INQUIRY

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●217 WHEREVER native courts have been established and maintain records of their proceedings, there is available a mass of material concerning native law and custom which, properly regarded, may be of great value to the ethnographer as well as to the administrator. In Tanganyika Territory, from one portion of which the material for the present paper is derived, the making of elaborate records of evidence and judgements is deprecated at the present stage of development, as likely to interfere with the smooth working of the courts. A minimum is required of the names of parties, a brief statement of the subject-matter, and a short judgement signed by the holder of the court, be he chief, headman, or chairman of a council. Under such
121 circumstances, a study of records will show, at the least, the types of
217 social maladjustment which bring people to court, with the relative frequency of different kinds of case: the manner in which different types of case are viewed by the court, whether as offences against society or as affecting only families or individuals: and probably some general indication of the tone of the society. From this type of record there will be an upward range to the most valuable of all for the student, those containing a précis of evidence and a full reasoned judgement.

Whatever the amount of material available, it can only provide a limited picture of native law. In most, possibly all, areas, large numbers of disputes never reach the courts at all, but are dealt with in family council or by village elders. Further, the courts are only resorted to when disequilibrium has come about, and it can seldom be safe to argue the positive from the negative. Nevertheless, generalizations should emerge, and even where they do not, lines of inquiry should be indicated and facts brought to light and explained, which might otherwise have remained obscured or not understood. Most important, it is likely that evidence of change will be found, either clearly stated or in the form of indications which will offer material for further study.

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An instance which shows a number of these possibilities comes from the court book of Bugufi, a chiefdom in the north-west of Tanganyika Territory. A custom which might or might not be noted by the ethnographer—something must escape the most meticulous of observers, and this one is not recorded by Meyer for the Barundi, of whom the people of Bugufi are ethnologically part—is the right of the chief to pasture his cattle among the millet-stalks after the harvest, before the peasant may put in his own cattle or any which he is herding for some one else. The court book records eight peasants coming to court to complain against a Tusi who has driven off their cattle. The Tusi replies that the men had pastured their cattle in their millet before the chief had had access. Asked by the court whether he was instructed to drive off the cattle, the Tusi replies that he acted as he was bound to do in accordance with ancient custom and his obligations to the chief. New concepts have, however, found their way into the court, which gives judgement for the plaintiffs on the grounds that the land and the cattle were theirs. This case is exceptional in the wealth of statement and suggestion which it offers, but there are many others helpful in lesser degree.

The value of native court records in this way was brought home to me while stationed in this area, Bugufi, during the years 1929–31, when I went through the available material with a view to seeing what were the normal causes of litigation and getting a general idea of the law administered. Starting with the year 1924, the series was examined up to the end of 1930. For these seven years, 850 cases were found where judgement issued, there being a further 225 which had been settled out of court or dismissed for want of prosecution or by reason of limitation. Of these 850 cases, almost one-quarter concerned contracts where cattle were involved, nearly one-sixth were marital cases, and another sixth were over administrative matters, including offences against the Native Authority Ordinance: only one-seventh were of offences against person and property, and the remainder concerned debts, land, inheritance, damage to property and a few miscellaneous matters.

The fullest records were those of the numerous marital cases, and these have been fully collated with a view to giving an idea of how much information can be gleaned and what gaps remain, and what

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suggestions there are of the effect of latter-day conceptions in superimposing themselves upon and modifying primitive law. Before going on to this, it should be added (what does not appear from the record) first, that the society of Bugufi is symbiotic, with a pastoral Tusi aristocracy, headed by a chief, dominating a semi-servile Hutu agricultural population, who largely outnumber the Tusi: secondly, that there have in Bugufi been strong forces making for change, quite apart from European administrative control. To go into these changes in detail is quite outside the scope of the present paper. It may be briefly mentioned, however, that the relative status of Tusi and Hutu is in process of rapid alteration, owing to the opportunities afforded to the Hutu under modern conditions of acquiring independent wealth, both through their labour (chiefly in Uganda) and latterly by the establishment in Bugufi of an economic crop, coffee. This change has meant maladjustment of the tribal structure. The chief sees in the economic independence of the Hutu an encroachment on his rights: and the Hutu regard the assertion of those rights as oppression. This conflict, together with the mental immaturity of the chief and the distance of the chiefdom—four days' march—from an administrative station, made it necessary for the government to establish a check in the form of a 'Native Adviser'. This system continued until early 1930, by which time an administrative station had been opened near the chief's head-quarters, and, he having shown signs of development, it was felt that an opportunity should be afforded the chief of ruling his country without the restriction of an adviser who was really a controller most of the time. These advisers, three in all, were alien to Bugufi. The first came from Bukoba, on Lake Victoria, where he later became town headman: the second was of Arab descent, having come from Urundi to live in Bugufi, where he had been settled for many years and enjoyed considerable respect: the last, a native of really fine character, who made every effort to train the chief for his work, was a Muziba from Bukoba District. All of them were charged with the dispensing of justice according to native law and custom—subject to altered concepts of crime, already imposed by the European régime, and to a general instruction to curb the oppressiveness of the chief, an instruction the interpretation of which might depend partly on the system of native law under which the adviser had been brought